Intermec Technologies Corp. v. Palm, Inc. Doc. 281

DAVID T. BIDERMAN, Bar No. 101577
TIMOTHY J. FRANKS, Bar No. 197645
M. CHRISTOPHER JHANG, Bar No. 211463
FARSCHAD FARZAN, Bar No. 215194
SANG (ALVIN) LEE, Bar No. 217635
PERKINS COIE LLP
Four Embarcadero Center, Suite 2400
San Francisco, California 94111
Telephone: (415) 344-7000
Facsimile: (415) 344-7050
Email: DBiderman@perkinscoie.com
Email: TFranks@perkinscoie.com
Email: CJhang@perkinscoie.com
Email: FFarzan@perkinscoie.com
Email: ALee@perkinscoie.com

Attorneys for Defendant GOOGLE INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CLRB HANSON INDUSTRIES, LLC d/b/a INDUSTRIAL PRINTING, and HOWARD STERN, on behalf of themselves and all others similarly situated, Plaintiffs, v. GOOGLE INC., Defendants.	CASE NO. C 05-03649 JW GOOGLE INC.'S APPENDIX OF DISCOVERY REQUESTS IN SUPPORT OF ITS MOTION FOR AN ACCOUNTING OF PLAINTIFFS' APPARENT DESTRUCTION OF RELEVANT DOCUMENTS AND MOTION TO COMPEL FURTHER RESPONSES TO INTERROGATORIES (L.R. 37-2) Date: January 6, 2009 Time: 9:00 a.m. Place: Courtroom 5 Judge: Honorable Patricia V. Trumbull

Dockets.Justia.com

APPENDIX OF DISCOVERY REQUESTS (L.R. 37-2)

Pursuant to Civil Local Rule 37-2, Google Inc. ("Google") sets forth below (i) the interrogatories for which it is moving to compel further responses, (ii) Plaintiffs' written objections and responses thereto, and (iii) Google's contention as to why it is entitled to further responses.[1]

Google is not moving to compel further responses to its document requests because Plaintiffs have confirmed that they are not withholding any documents on the basis of their objections and that they have produced all responsive documents found after conducting reasonable searches. Rather, Google is moving for an accounting of Plaintiffs' apparent destruction of relevant documents. Accordingly, Civil Local Rule 37-2 does not apply to that portion of the Motion, and no purpose would be served by reiterating here each of the document requests and each of Plaintiffs' responses. Moreover, true and correct copies of the document requests and responses are attached to the accompanying Declaration of Sang (Alvin) Lee as Exhibits A-D.

GOOGLE'S FIRST SET OF INTERROGATORIES:

INTERROGATORY NO. 2:

State the amount of monetary damages YOU claim that YOU sustained as a result of any conduct and/or omission of GOOGLE.

RESPONSE TO INTERROGATORY NO. 2 (CLRB HANSON AND STERN):

Plaintiff objects to this Interrogatory on the grounds that it seeks information that is already on the record, has already been produced, or is already available to Google. It is burdensome and oppressive to require Plaintiff to duplicate effort to respond to this question.

Subject to general and specific objections, Plaintiff states that the amount of monetary damages it sustained are the amounts that Google charged Plaintiff over its daily budget.

---

[1] Where Plaintiffs had identical responses, only one response is included. The only difference in Plaintiffs' responses is the use of pronouns identifying the Plaintiffs. Where a response relates to a specific Plaintiff that Plaintiff is so identified.

Goggle's records contain Plaintiff's daily budget and the amount in excess of the daily budget Google charged it.

GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:

Google is entitled to discovery from Plaintiffs that relates directly to their alleged damages. This request relates only to the named Plaintiffs and not to their putative class, therefore Plaintiffs have the necessary material to provide complete responses. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of this information to the case and Google's need for the information to prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from a source other than Plaintiffs. *See* Fed. R. Civ. P. 26(b)(2). Moreover, Plaintiffs have confirmed that they are not withholding any information on the basis of any objection.

Plaintiffs' responses are inadequate. They have failed to quantify their damages and have only provided generic responses.

INTERROGATORY NO. 3:

Describe in detail how YOU calculated the amount of pecuniary damages YOU claim that YOU sustained as a result of any conduct and/or omission of GOOGLE.

RESPONSE TO INTERROGATORY NO. 3 (CLRB HANSON AND STERN):

See response to Interrogatory No. 2.

GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:

Google is entitled to discovery from Plaintiffs that relates directly to their alleged damages. This request relates only to the named Plaintiffs and not to their putative class, therefore Plaintiffs have the necessary material to provide complete responses. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of this information to the case and Google's need for the information to prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from a source other than Plaintiffs. *See* Fed. R. Civ. P. 26(b)(2). Moreover, Plaintiffs have confirmed that they are not withholding any information on the basis of any objection.

Plaintiffs' responses are inadequate. Plaintiffs only reference their responses to Interrogatory No. 2 in which they failed to quantify their damages and only provided generic responses.

INTERROGATORY NO. 5:

Identify the date on which YOU first realized that it is GOOGLE's policy that, on any single day, the AdWords system may deliver up to 20% more ads that YOUR daily budget calls for to help make up for other days in which your daily budget is not reached.

RESPONSE TO INTERROGATORY NO. 5 (CLRB HANSON):

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague and ambiguous. Plaintiff objects to this Interrogatory on the grounds that it seeks information that is already on the record, has already been produced, or is already available to Google.

See response to Interrogatory No. 4 above. In addition, subject to the general and specific objections, Plaintiff at various times from the 2nd quarter of 2004 to the 2nd quarter of 2005, sought a satisfactory explanation from Google as to the overcharges. At times Plaintiff was told that it would be credited for overdelivery. When Plaintiff realized that Google was not going to credit it for overdelivery, it sought legal assistance and commenced a lawsuit in August 2005.

RESPONSE TO INTERROGATORY NO. 5 (STERN):

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague and ambiguous. Plaintiff objects to this Interrogatory on the grounds that it seeks information that is already on the record, has already been produced, or is already available to Google.

Subject to the general and specific objections, Plaintiff responds as follows: On October 22, 2003, Google sent Plaintiff stating: "As traffic is never constant from day to day, it is possible that you may accrue charges above or below your set limit. In general, we try to keep your daily cost fluctuation to no more than 20% above your daily budget . . . ." However, in response to Mr. Stern's request that same day that the bill be "rework[ed] . . . to reflect a $10/day max, not some sort of average that approximates $10/day," Goggle stated: "We will make sure that in a given billing period, you are not overcharged." Google also stated on November 20, 2003: "When your ad accrues more clicks in a day than your daily budget allows, you are automatically given overdelivery credits for the excess amount."

GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:

Google is entitled to discovery from Plaintiffs that relates directly to their alleged damages. The information requested goes directly to Google's waiver defense and mitigation of any alleged damages after Plaintiffs were informed that Google may deliver up to 20% more ads than their daily budget called for. *See* Fed. R. Civ. P. 26(b)(1). The discovery goes directly to the issues of this case. The discovery requested is proportional to the importance of this information to the case and Google's need for the information to prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from a source other than Plaintiffs. *See* Fed. R. Civ. P. 26(b)(2). Moreover, Plaintiffs have confirmed that they are not withholding any information on the basis of any objection.

Plaintiffs' responses are inadequate. Google has asked Plaintiffs to state the date on which they first became aware of the 120% Rule. Rather than provide a date, Plaintiffs gave non-responsive answers that referenced various communications they had with Google about billing issues.

INTERROGATORY NO. 7:

Identify with specificity the pecuniary damage(s) YOU claim YOU suffered as a result of GOOGLE delivering clicks in excess of 100% of YOUR AdWords daily budget.

RESPONSE TO INTERROGATORY NO. 7 (CLRB HANSON AND STERN):

Plaintiff objects to this Interrogatory on the grounds that it seeks information that is already on the record, has already been produced, or is already available to Google. It is burdensome and oppressive to require Plaintiff to duplicate effort to respond to this question.

Subject to the general and specific objections, Plaintiff states that the amount of pecuniary damages he suffered are the amounts that Google charged Plaintiff over his daily budget, together with interest. Goggle's records contain Plaintiff's daily budget and the amount in excess of the daily budget Google charged him.

GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:

Google is entitled to discovery from Plaintiffs that relates directly to their alleged damages. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of this information to the case and Google's need for the information to prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from a source other than Plaintiffs. *See* Fed. R. Civ. P. 26(b)(2). Moreover, Plaintiffs have confirmed that they are not withholding any information on the basis of any objection.

Plaintiffs have provided inadequate responses. Instead of "[i]dentify[ing] with specificity" their damages relating to clicks in excess of 100% of their daily budget Plaintiffs have provided only general statements and have not quantified their damages.

INTERROGATORY NO. 18:

For each AdWords ad campaign which YOU created, edited, or managed on behalf of any PERSONS other than CLRB Hanson, LLC, identify the ad campaign, the related account name, the account number under which the campaign was created, the identity of the PERSON on whose behalf it was created, and the PERSON who paid for the campaign.

RESPONSE TO INTERROGATORY NO. 18 (CLRB HANSON):

Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague, ambiguous, not reasonably calculated to lead to admissible evidence. It is unduly burdensome, seeks information that is already on the record, has already been produced, or is already available to Google.

Subject to the general and specific objections, Plaintiff states that Brett Hanson created, edited, or managed AdWords campaigns as a consultant for SECOA Inc. and Hanson Industries.

GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:

Google is entitled to discovery from CLRB Hanson that relates directly to Plaintiffs' alleged damages. The information requested goes directly to Google's waiver defense and mitigation of any alleged damages after Plaintiffs were informed that Google may deliver up to 20% more ads than their daily budget called for. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of this information to the case and Google's need for the information to prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from a source other than Plaintiff. *See* Fed. R. Civ. P. 26(b)(2). Moreover, Plaintiff has confirmed that it is not withholding any information on the basis of any objection.

Plaintiff has provided an inadequate response. While Plaintiff provided a response as to the entities he consulted, he has failed to identify the specific ad campaigns as requested.